

Response to Scottish Government consultation exercises on the Community Empowerment (Scotland) Act 2015

ACCOUNTS COMMISSION 

AUDITOR GENERAL 

Prepared by Audit Scotland

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Introduction

The Accounts Commission for Scotland is an independent public body appointed by ministers to hold local government to account. The Controller of Audit post is independent, established by statute and whose functions involve reporting to the Commission on the audit of local government.

The Auditor General for Scotland is an independent crown appointment, made on the recommendation of the Scottish Parliament, to audit the Scottish Government and health bodies and report to Parliament on their financial health and performance.

Audit Scotland was created to support both the Accounts Commission and the Auditor General for Scotland in carrying out their work.

About this response

This is the response of the Accounts Commission and the Auditor General for Scotland to the Scottish Government's consultation on various aspects of the Community Empowerment (Scotland) Bill. It has been prepared on our behalf by Audit Scotland.

We responded in September 2012 to the Scottish Government's previous exploratory consultation on its proposals for a Bill and again in January 2014. We welcome this opportunity to provide a further response to the Act itself, and are prepared to offer further input as required as the Act progresses.

We have concentrated on those areas in which we have a current direct involvement and interest:

- Part 2 – Community Planning – Consultation on Draft Guidance and Regulation (due 13 June)
- Asset Transfer – Consultation on Draft Regulations (due 20 June)
- Participation Requests – Consultation on Draft Regulations (due 20 June).

Community Empowerment (Scotland) Act 2015. Part 2 Community Planning: Consultation on draft guidance and regulations

Question 1: The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any other?

The draft guidance sets out nine principles for effective community planning:

- Shared leadership
- Governance and accountability
- Community participation and co-production
- Understanding of local communities' needs, circumstances and opportunities
- Focus on key priorities
- Focus on prevention
- Tackling inequalities
- Resourcing improvement
- Effective performance management.

We support the proposed principles. They reflect the Statement of Ambition expectations that all CPPs should improve outcomes, drive prevention, address inequalities and make best use of shared resources. The legislation is clearly significant in relation to how public bodies fulfil their responsibilities and how they interact with and involve citizens and communities. We are considering how the Act influences our responsibilities in relation to delivering public audit. The proposed guidance and regulations will help us take forward our thinking. We do, however, have some specific comments on aspects of a number of the proposed principles.

We have set out in our previous reports on community planning our views on the importance of a clear focus on shared leadership. We welcome this being set out as a key principle for effective community planning. We would reiterate our view that while shared leadership is vital, it is crucially important that this is translated into practical change on the ground. Therefore, it is important that that shared leadership is not simply seen as an issue for CPP Boards, but is reflected in the organisational practices and cultures of community planning partners at all levels.

We welcome the emphasis given to scrutiny as a core element of effective governance and accountability.

Effective performance management is a key factor in CPPs being able to demonstrate that they are improving outcomes for local people and delivering Best Value. We have made clear, in an earlier report¹, our views that the Scottish Government needs to streamline and align national performance and accountability frameworks to support CPPs in focusing on place, prevention and performance. There is a risk that the continuing disconnect between some

¹ *Community Planning – an update report*, March 2016, paragraphs 52 – 64.

national performance management systems may discourage and even prevent community planning partners from being able to focus transformation efforts on Local Outcome Improvement Plans (LOIPS) which truly reflect local needs and concerns. In addition, we have previously reported our concerns over the lack of formal accountability mechanisms for community planning partners as collective partnerships.

We welcome the resourcing improvement principle. This will support the duty in the Act which requires partners to contribute such resources agreed by the CPP in order to deliver its ambitions. However, it is not clear what remedial options are available should any partners fail to contribute the resources that the CPP thinks are required to deliver locally agreed improvement priorities.

We welcome the emphasis within the guidance on accountability to communities, as the needs and concerns of communities should be at the heart of community planning. The proposed guidance encourages partners to challenge and hold each other to account. This is clearly an essential element of effective partnership working and crucial to ensure effective scrutiny. Partnerships which already have established appropriate shared leadership and where partners are already working well together are likely to continue to do this. However, the continued absence of any more formal accountability mechanisms means it is difficult to see how the guidance will support CPPs to hold reluctant or disengaged individual partners to account.

Question 2: The draft guidance sets out common long-term expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting those expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?

We most recently reported on the need for clarification on the Scottish Government's and COSLA's performance expectations of community planning and CPPs as part of our Community Planning – an update report². We had already highlighted this need in our predecessor report Community Planning: Turning Ambition into Action (November 2014). It is our view that this draft guidance does not adequately address this need and does not set out a clear framework against which progress and improvement in community planning can be assessed over the short, medium and long term. The Statement of Ambition helped provide useful momentum to the development of community planning: the guidance could do more to provide clarity for CPPs about what they are meant to achieve.

We agree that it is essential that each CPP must use an evidence-based approach to setting local improvement priorities, underpinned by effective community involvement. Each CPP should have an understanding of local conditions to use that understanding to set meaningful, short, medium and longer term measures that reflect local circumstances. While it is good to see the guidance focus on progress in terms of locally determined outcomes, it would also be helpful if it identified common expectations in standards of practice – in particular around the

² *Community Planning – an update report*, March 2016, paragraphs 11-14 and 44-46.

use of data, information and community engagement. This would ensure greater consistency of practice across CPPs.

Question 3: The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality plan(s). CPPs must from time to time review their LOIP and locality plan(s) under review and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise their plans after a specific period of time in every case? If so, what should that specific period be?

We welcome the fact that the guidance seeks to enable as much local flexibility as possible. We note that there are already a number of well defined reporting and review processes within CPPs, and that these are mostly defined by CPPs themselves, based on their own local needs and understanding. We would not propose creating additional complexity by suggesting a fixed timeframe for all CPPs to adhere to. However, from 'time to time' may not provide the appropriate focus on the importance of review and public engagement and feedback.

It may be more appropriate for each CPP to set a minimum and maximum review date, creating a 'window' for review with local flexibility built in to ensure the timeframe can adapt to local need and changing circumstance.

Question 4: What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans? Is that 4 months, 6 months or other?

It would seem appropriate that such a commitment be fulfilled as quickly as possible. CPPs will be in the habit of continually monitoring progress and will be well placed to provide progress reports. Six months would be an unnecessary delay in ensuring public awareness of local performance and would restrict agile and adaptive response to emerging issues.

Question 5: Do you have any other comments about draft guidance?

In relation to paragraph 174 of the consultation paper, (Part 4: Guidance on other provisions in Part 2 of the Act: Duties on Scottish Ministers to Promote Community Planning), we would suggest that it would be helpful to elucidate how such a responsibility will be fulfilled.

It would be helpful to have some clarity of the expectations included in this section. In particular, it would be useful to clarify how Scottish Ministers will demonstrate and report on how they are discharging this duty. For example, within the Scottish Government, sponsor divisions have a vital role to play in promoting community planning, particularly around their multi-faceted engagement with public bodies, and indeed their own role as community planning partners. It would be useful to know how the Scottish Parliament will hold them to account for their performance in relation to this aspect of their role as Ministers.

It is unhelpful to have an additional set of terminology entering common parlance around the arena of community planning. It is our experience that there is some degree of confusion around the use of the term localities, particularly in the context of integration of health and social care and its relationship with community planning.

Question 6: We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?

We agree that there should be as few criteria as is practically possible to ensure local flexibility and effective community engagement. Criterion based on population size would, on the surface, seem to be a useful starting point. However, there are risks to this and these are outlined in the answer below.

Question 7: The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning? What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?

CPPs already face a range of challenges in determining appropriate arrangements for locality planning – these include:

- alignment to IJB localities
- where there are co-terminous services in operation
- where services operate over 2 or more LA areas
- where a key partners operates on a national basis
- where the mix of rural and urban areas make it difficult to ‘cut’ localities into working structures.

For those reasons, we believe that a principles-based approach to determining localities would be a better approach than simply setting a maximum population size for localities when any size limits risks appearing arbitrary and might inhibit local flexibility. Essentially, a locality should be large enough to ensure effective partnership working and small enough to ensure effective community engagement. A locality of 30,000 may not be an appropriate size for ensuring impact from targeted resources. However, partners may have limited capacity to engage locally with a locality with a smaller population size.

In the case that any forthcoming programme for Government makes any commitment to consult on and introduce a Bill that will decentralise locality authority functions, budgets and democratic oversight to local communities, it would make sense to align those developments with the Community Empowerment Act. We also note the outcome of the recent independent review of the Scottish planning system and the potential ramifications of the recommendation for a statutory duty for the development plan to be aligned with community planning.

Communities themselves must be instrumental in identifying a locality that works for them. Localities should not be decided on using traditional boundary markers such as wards alone. Localities should be based on natural neighbourhoods wherever possible. Care must also be taken to go beyond geographical communities and consider other definitions of community

including communities of interest. Factors such as these could be used to set out a range of principles that CPPs should consider when establishing localities for community planning purposes.

Question 8: Do you have any other comments about the draft Regulation?

There are a number of areas, already covered in our previous comments and responses that we would want to reiterate here.

We welcome the increasing emphasis within this guidance on public sector accountability to communities. We acknowledge the role that individuals and communities have in scrutinising the quality of the public services they have access to.

In addition, we would underline our support for robust self evaluation as an important part of effective public sector performance management. For example, an over-riding aim of the Accounts Commission's strategy is "to promote increased pace of improvement and councils demonstrating good governance and using rigorous self-evaluation". We value the role that self evaluation can have in developing relationships between CPPs and citizens in identifying how they can improve. Therefore, it would be useful to see self assessment featured more prominently within the draft regulations.

We note that paragraphs 54 to 57 provide some guidance on community capacity building. There is scope for more clarity around who has responsibilities for developing communities' ability to engage in the community empowerment agenda, and how this affects the responsibilities of CPPs and individual organisations within those CPPs. In addition we would welcome more focus on how CPPs demonstrate that capacity is being developed and improved.

Question 9: Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?

While the locality plans are designed to enable targeted work with communities in most need, inequalities do not fit into geographical or categorised silos. CPPs must take care to ensure that there remains a focus on cross cutting inequalities and that specific interventions do not create any unintentional inequalities. It would be worth considering how guidance can be clearer about these relationships.

Asset Transfer – consultation on draft regulations

While we would not want to make individual comments on each question within this section, we would wish to note the following points:

We note from Section 2 of the consultation paper that valuation will not form part of the regulations. Section 2 identifies that relevant authorities already have a duty to secure best value when disposing of property and refers to the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the Scottish Public Finance Manual. The Accounts Commission and Auditor General both therefore have an audit interest in the matter. We would point out that the guidance accompanying the 2010 regulations is aimed at assisting local authorities assess disposals at less than best consideration and includes statutory guidance on valuation. It is important that any further guidance in this area takes account of the existing regulations and guidance and it is unclear from the consultation paper the 2010 guidance, or indeed the Public Finance manual, will need to be updated. We would also ask that it be noted that Audit Scotland's role on the short life working group on valuation and assessment of non-financial benefits is that of 'observer'.

With regards to Section 4 and local authorities and ALEOs – a notable exception here would be Glasgow (there are others), who has transferred ownership of properties to a wholly owned subsidiary. The Scottish Government will be aware of the work of the Accounts Commission around 'following the public pound' and we understand that this remains an area of interest to the Scottish Government. Thought needs therefore to be given to the implications for such bodies.

With regards to Section 6 Registers of land – It is not clear what work would be involved for public bodies in terms of publishing a list. If relevant bodies are to be required to publish lists then some common standard ought to make sense and where possible existing records and systems for asset management should be used for that purpose.

With regards to Section 6, in terms of property that doesn't need to be on the register, it would be useful to clarify the implications for inalienable land and property belonging to the common good.

In addition, it may save considerable time and resource if councils were able to designate land and property of strategic importance to council operations and exclude it from transfer requests.

In general, while we do not have any points in relation to the specific questions raised in the consultation paper on community right to request rights in relation to property (ie, questions 8 to 13), we would reiterate the importance of any transfers being undertaken on the basis of a sound business case. This should set out how the public interest would be served by such a change. We would expect any public body considering transfers to demonstrate that good financial management underpins the decision making processes for individual transfers. In addition, there would need to be a sound financial review of the community group's plans and assurance that the community group had sufficient funds to support and sustain the use of the

asset. It would also be necessary to be clear about what would happen in case of failure by the community to make effective use of the asset.

Participation Requests – Consultation on Draft Regulations

While we recognise the potential significance of this part of the legislation to public bodies, we again would not wish to make specific responses to questions within this section. We would however make the following points:

For reasons of consistency, transparency and accessibility, we see the sense in the proposal that all applicants making a participation request should use a statutory form. That said, it is critically important that the form is accessible, easy to understand, and that public bodies make adequate efforts to support applicants to complete the form as necessary. Consistency of approach across public bodies will be critical in ensuring fairness, openness and accountability. Community bodies wishing to make an application must not have to navigate through a plethora of different processes and mechanisms adopted by different agencies.

In addition, public bodies should make every effort to promote the use of participation requests. This should include evidenced actions to reach seldom heard groups. Public bodies should have clear communication strategies for promotion of participation requests. Communication strategies should outline how a public body will ensure they reach all applicable groups. Information should be offered in clear language, with appropriate available translation, and be accessible for people with disabilities and learning difficulties. Public bodies should demonstrate that they apply the revised National Standards for Community Engagement throughout this process.

Examples of successful participation requests and additional information on how criteria could be met could be provided by public bodies to any groups wanting to make a request or considering a request. Public bodies should make appropriate use of social media, newsletters and other external communication and media channels to ensure a wide reach.

There is a wealth of information readily available on excluded and hard to reach communities. It is important that efforts are made to reach these communities which could include gypsy traveller communities; communities that are not represented or served by community councils or community development trusts and communities of interest.

With regards to decision notices, these should include clear information on how an application has met or not met criteria. There is likely to be instances that an application is almost there and needs support to ensure a successful reapplication. A decision notice should include clear advice on where to access support to improve the application.

To encourage accessibility and transparency, it would seem helpful that decision notices include information on the decision making panel.

Conclusion

We hope that this response provides a useful reflection of our experience so far in the scrutiny of community planning, and of our responsibilities in holding public services to account and encouraging improvement. We are of course willing to share further reflections as appropriate, as the process for the Act continues.

June 2016